judge accepted the point as well-founded and dismissed the application for foreclosure.

That decision has now been appealed against on the ground that the judge was wrong in saying there had been a failure to comply with section 21.

Before us the matter has been rather more fully argued than it was at the trial, and I find myself compelled to the view that there was compliance with section 21.

In the first place it was put to us that by reason of the Schedule to the Moneylenders Ordinance which sets out the form of the certificate under sections 19 and 21 and which contains no place for a signature there is no necessity for the certificate under section 21 to be signed. Section 21, however, refers to the certificate which it requires as that prescribed by section 19. Section 19 speaks of a certificate being made and signed and says that:—

"a statement of account given in the form in the First Schedule to this Ordinance shall be deemed to comply with the requirements of this sub-section."

On that my view is that what it means is that a statement in the form set out in the Schedule is a statement within the meaning of the word "statement" as used in section 19, but it does not in any way dispense with the necessity for that statement having been drawn up in the form in the Schedule and then being signed. That argument is lacking in merit.

There is, however, much substance in the second argument which has been addressed to us, which was based on the case of *In re Hinchliffe* [1] which was decided in 1896 and which as recently as 1959, in the case of *Re Moritz (deceased)*,[2] was recognised as still being a correct statement of the law. The issues in that case were entirely different from those in the present case. The question, however, did arise as to whether or not certain exhibits to an affidavit formed part of the affidavit and in that connection Lord Herschell L.C. said that these exhibits:

"form as much part of the affidavit as if they had been actually annexed to and filed with it."

What is even more in point is what was said by A. L. Smith L.J. What he said was this:—

"When a person makes an affidavit, and states therein that he refers to a document marked with the letter A, the effect is just the same as if he had copied it out in the affidavit. It is only made an exhibit to save expense."

In the present case the appellant or his agent said this in the course of his affidavit which was signed:—

"A copy of the statement of account in compliance with sections 19 and 21 of the Moneylenders Ordinance is annexed hereto marked 'P3' ".

So it is. There it is bound up with the rest of the affidavit not with thread or wire but with the attestation of the commissioner for oaths.

In the circumstances it is impossible to resist the conclusion that the certificate is part of the affidavit and that the signature is attached to the affidavit as a whole and therefore to every part of it.

In my view the appeal should be allowed with costs and the order of the High Court dated 6th July, 1964, should be set aside.

Barakbah C.J. (Malaya) and **Tan Ah Tah F.J.** concurred.

Appeal allowed.

Solicitors: *P. S. Maniam & Co.; N. Ramachandran.*

JAGAT SINGH v. CHIA BAN WEE

[O.C.J. (Chua J.) November 13, 1964]

[Singapore — Suit No. 533 of 1962]

Moneylending — Transaction under Moneylenders Ordinance (Cap. 193) — Repeal of old Ordinance by new Ordinance — Moneylender ceasing to be a moneylender — Action for recovery — Subsequent taking of licence under Moneylenders Ordinance, 1959.

Legislation — Repeal — Effect of — "Acquired" or "accrued" right — Interpretation and General Clause Ordinance (Cap. 2), s. 14(c).

The defendant executed a promissory note in favour of the plaintiff, a moneylender, for $5,200 with interest thereon at 48% on August 12, 1958. On September 11, 1959 the old Moneylenders Ordinance (Cap. 193) was repealed and the new Moneylenders Ordinance, 1959, came into force. The plaintiff issued his writ on the May 2, 1962 claiming the sum of $8,093.13 being the principal and the balance of interest on the promissory note. Subsequently on the December 3, 1962 the plaintiff took out a moneylender's licence under the new Ordinance. The defence was that (a) the plaintiff had not complied with section 5 of the old Ordinance in that the note or memorandum was not signed before the money was lent and that the note or memorandum did not contain all the terms of the contract, and (b) the plaintiff had failed without reasonable excuse to comply with the defendant's demand in writing dated March 24, 1960 under section 20(2) of the new Ordinance to supply the defendant with a copy of the promissory note relating to the claim.

Held: (1) there was no obligation on a moneylender to comply with the provisions of section 5 of the old Ordinance and non-compliance of its provisions merely rendered the moneylending contract unenforceable. The section merely gave the borrower a right to defend any claim by his lender and was not an "acquired" or "accrued" right within the meaning of section 14(c) of the Interpretation and General Clauses Ordinance. The right to defend did not become an accrued right until the plaintiff commenced this action by which time the old Ordinance had been repealed. As there was no saving clause in the new Ordinance preserving this mere right, the effect of the repeal was that the right vanished altogether and was no longer available to the defendant;

(2) the plaintiff was not a moneylender within the meaning of the new Ordinance until he took out a licence on December 3, 1962. It cannot be presumed that he was a moneylender between September 11, 1959 and

December 2, 1962 under section 115 of the Evidence Ordinance;

(3) the demand to supply the defendant with a copy of the promissory note under section 20(2) of the new Ordinance was not applicable to the plaintiff. If the said section was to apply in this case a new demand must be sent to the plaintiff after he had taken out the licence.

CIVIL SUIT.

Punch Coomaraswamy for the plaintiff.

N. A. Christopher for the defendant.

Cur. Adv. Vult.

Chua J.: The plaintiff's claim is for the sum of $8,097.13 being the principal and the balance of interest due on a promissory note for $5,200.

The undisputed facts are shortly as follows. The defendant executed a promissory note in favour of the plaintiff for $5,200, with interest at 48%, on the 12th August, 1958. At the time of making the loan the plaintiff was a moneylender within the meaning of the Moneylenders Ordinance (Cap. 193), hereinafter referred to as "the old Ordinance." On the 11th September, 1959, the Moneylenders Ordinance, 1959, (hereinafter referred to as "the new Ordinance") came into operation and the old Ordinance was repealed. The plaintiff issued his writ in this matter on the 2nd May, 1962. Subsequent to the issue of the writ, the plaintiff, on 3rd December, 1962, took out a moneylender's licence under the provisions of the new Ordinance.

The defence is that the plaintiff's claim is not maintainable against the defendant for the reasons (1) that the plaintiff has not complied with section 5 of the old Ordinance in that the note or memorandum was not signed before the money was lent and further that the note or memorandum does not contain all the terms of the contract and (2) that the plaintiff has failed without reasonable excuse to comply with the defendant's demand in writing dated the 24th March, 1960, under section 20(2) of the new Ordinance to supply the defendant with a copy of the promissory note relating to the claim herein.

The plaintiff's contention is that as the old Ordinance has been repealed the defendant cannot rely on section 5 of the repealed Ordinance.

The effect of repealing a statute is to obliterate it as completely as if it had never been passed but this rule must be taken with the qualification set out in section 14 of the Interpretation and General Clauses Ordinance (Cap. 2).

Now, under the provisions of section 14(c) of the Interpretation and General Clauses Ordinance, a repeal, unless the contrary intention appears, does not affect "any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed."

There was no obligation on a moneylender to comply with the provisions of section 5 of the old Ordinance. If he failed to comply with its provisions the moneylending contract was merely rendered unenforceable. That section therefore merely gave the borrower a right to defend any claim by his lender for repayment of money lent to him and was not an "acquired" or "accrued" right within the meaning of section 14(c) of the Interpretation and General Clauses Ordinance. The right to defend did not become an accrued right until the plaintiff commenced this action against the defendant by which time the old Ordinance had been repealed. As there is no saving clause in the new Ordinance, preserving this mere right the effect of the repeal of the old Ordinance was that that right vanished altogether and is no longer available to the defendant.

The defendant further contends that the plaintiff did not cease to be a moneylender when the new Ordinance came into operation and that from that date, the 11th September, 1959, the provisions of the new Ordinance were applicable to the plaintiff. The defendant says that after the coming into force of the new Ordinance, the plaintiff still stayed at the same place where he carried on his moneylending business, that he collected outstanding debts and that subsequently on the 3rd December, 1962, he took out a licence under the new Ordinance and the defendant invites the court to invoke section 115 of the Evidence Ordinance and presume that the plaintiff was a moneylender between 11th September, 1959, and the 2nd December, 1962.

The evidence of the plaintiff was that he had not lent any money from the 10th September, 1959, and that from that date he did not carry on the business of a moneylender nor had he advertised or held himself out as a moneylender and that he was only collecting the loans made by him prior to the 10th September, 1959 and that he did not resume his moneylending business until some 3 years later on the 3rd December, 1962, when he took out a licence under the new Ordinance.

The plaintiff contends that as from the 10th September, 1959, until the 2nd December, 1962, he was not a moneylender within the meaning of the new Ordinance.

No evidence was adduced by the defendant that the plaintiff was carrying on a moneylending business after the coming into force of the new Ordinance. In fact the plaintiff was not even cross-examined on this point.

It seems to me that this is not a proper case for the application of section 115. Whether the plaintiff was carrying on the business of a moneylender between 11th September, 1959, and 2nd December, 1962, is a matter of evidence and not a proper subject for the exercise of a presumption.

In my view therefore the plaintiff was not a moneylender within the meaning of the new Ordinance until he took out a licence on the 3rd December, 1962.

The defendant contends that even if the plaintiff was not a moneylender within the meaning of the new Ordinance during the period 11th September, 1959, and 2nd December, 1962, the plaintiff was obliged to comply with the provisions of section 20(2) of the new Ordinance as soon as he took out a licence on the 3rd December, 1962. With all respect to the learned counsel I cannot agree with this contention. The demand was sent to the plaintiff on the 23rd March, 1960, to supply the defendant with a copy of the promissory note relating to the claim in this case but at that time the provisions of section 20(2) were not applicable to the plaintiff. It seems to me that if section 20(2) is to apply in this case a new demand must be sent to the plaintiff after he had taken out a licence.

I now turn to deal with the issues of fact.

The plaintiff says that he handed the defendant $5,200 in cash on the 12th August, 1958 and that $540 had been paid by way of interest.

The defendant in his defence which was filed said:

"(a) that there were three antecedent transactions contracted by the plaintiff and the defendant being $2,000 on the 3rd August, 1957, $2,000 on the 22nd August, 1957 and $2,000 on the 4th January, 1958 with interest charged and payable in respect of these loans.

(b) that a total repayment of $3,290 being $2,500 towards principal and $790 on account of interest was made by the defendant to the plaintiff between the period 31st August, 1957 to the 17th July, 1958.

(c) that the alleged loan of $5,200 stated on the promissory note dated the 12th August, 1958, is made up of $3,500 on account of principal remaining unpaid in respect of the said previous transactions and the sum of $1,700 as accrued interest."

The oral evidence of the defendant was shortly this. There were three previous loans. After examining the ledger of the plaintiff in court he said that the first loan was not on the 3rd August, 1957, but the 2nd August, 1957 and the third loan was not on the 4th January, 1958 but the 3rd January, 1958. He said that he kept a record of all the repayments he made to the plaintiff in respect of these three loans in his diary and he submitted a statement which was extracted from his diary showing the amounts of repayments and this was marked Ex. D.5. On the 12th August, 1958, he was still owing the plaintiffs on these three loans. He explained how the promissory note for $5,200 came to be executed. He said:

"On these loans I had been paying three sums of $280 each p.m. on different dates. I found it was too much for me to pay $840 p.m. towards these three loans. So, I suggested to the plaintiff that I wished to discharge these loans, to make things easier for me, by consolidating these three loans into one. He agreed and he prepared a promissory note for $5,200. He suggested and I agreed that the principal due was $3,500 and $1,700 was interest. We had gone into the accounts before the figures were fixed, there were differences as to the amounts but eventually I agreed to those figures suggested by the plaintiff."

He denied that he received $5,200 cash on the 12th August, 1958.

In his cross-examination he said:

"It is not my case that on the 12th August, 1958, I owed the plaintiff $3,500 principal and $1,700 interest. On that day I owed the plaintiff $3,500 principal and interest on the three previous promissory notes and I agreed to pay $1,700 further interest."

He further said that according to his record he had paid towards the three previous loans $2,000 principal and $1,550 interest making a total of $3,550. When he was further questioned he said:

"Yes total principal was $6,000; yes principal outstanding on 12th August, 1958, was $4,000; no interest outstanding as I had paid all interest."

His attention was then drawn to his defence where he stated that $2,500 was paid towards principal and he replied:

"Yes, the figure of $2,500 is the correct figure, the total sum I paid towards principal; not up to 12th August, 1958 but up to 17th July, 1958. Between 17th July, 1958 and 12th August, 1958 I made no payments towards principal. Yes in my defence I said up to 12th August, 1958. I had paid $2,500 towards principal. I now say the correct figure is $2,500."

He was asked what was the total sum paid by him towards principal according to his statement, Ex. D5, and he replied:

"I paid about $2,500 as principal according to Ex. D5. There are small sums of money which I paid and not recorded by me in my diary. According to Ex. D5 I paid $2,500 towards principal and $1,050 towards interest."

He admitted that "$790" set out in his defence as payment of interest was incorrect.

His attention was also drawn to his defence where he stated "the sum of $1,700 as accrued interest" and he said that was not correct. His explanation was that the defence was drafted by a friend and that when he engaged a solicitor he informed his solicitor that the $1,700 was "anticipated interest."

He admitted that all the writing on the promissory note for $5,200 except the plaintiff's signature and the figure "5,200" was written by him.

The defendant by his signature to the promissory note and to the acknowledgment at the foot of the promissory note has acknowledged receiving the sum of $5,200 and the onus is on him to show that he did not receive the $5,200. This, in my view, he has failed to do.

I am unable to rely on the entries made by the defendant in his diary as regards the repayments he made towards the three previous loans. The plaintiff's book of account appears to me to be properly kept and I accept the plaintiff's evidence that all previous loans except the sum of $597 had been settled by the 12th August, 1958 and that the loan of the 3rd January, 1958, was for $2,300 and not $2,000.

The story of the defendant that he asked the plaintiff to consolidate what was due on the three previous loans into one note so as to make things easier for him is, I think, improbable and I am unable to accept his evidence on the matter. I find that the defendant would lie when it suited him. His diary disclosed that he was in great financial difficulties early in August, 1958. I accept the plaintiff's evidence that $5,200 was lent on the 12th August, 1958.

There will be judgment for the plaintiff in the sum of $8,097.13 and costs and further interest on $5,200 at 18% per annum from the 15th April, 1961, until judgment.

Judgment for the plaintiff.

Solicitors: *Braddell Bros.*; *N. A. Christopher.*

WHITE HUDSON & CO. v. ASIAN ORGANIZATION LTD.

[P.C. (Lord Guest, Lord Pearce and Lord Upjohn) November 16, 1964]

[Privy Council Appeal No. 2 of 1963]

Trade Marks — Passing off — Sweet wrappers — Distinctive get-up — Risk of confusion — Special market condition in Singapore — Type of customers.

This was an action in which the appellants claimed an injunction to restrain the respondents from passing off or attempting to pass off medicated sweets not manufactured by the appellants as and for the goods of the appellants. The appellants carry on business as manufacturers of sweets in England and these were sold through their agents in Singapore. The sweets were wrapped in red coloured cellophane wrappers on which is printed the name "Hacks". The respondents were manufacturers' agents in Singapore and they imported into Singapore medicated cough sweets manufactured in Holland. The sweets were of similar size and shape and colour to the appellants' sweets. They were originally wrapped in white cellophane paper but from May 1958 each sweet was wrapped in red coloured wrapper on which was printed the name "Pecto". The trial judge granted the injunction but his decision was reversed by the Court of Appeal ([1962] M.L.J. 139). On appeal to the Privy Council,

Held: (1) the learned trial judge was justified in holding (a) that the get-up of the goods had become distinctive and that it was associated and identified with them; (b) that in the circumstances there was a probability of confusion between the goods of the appellants and of the respondents; and (c) that in considering the conditions in Singapore and the fact that the get-up is all important for the non-English speaking members of the public, the similarity of the get-up of the sweets was such as to be calculated to deceive. It was unnecessary to prove actual deception;

(2) the design of the wrapper need not be novel provided that the get-up was distinctive of the appellants' goods and had been identified with them.

Cases referred to:—

(1) *John Brinsmead & Sons Ltd.* v. *Brinsmead* (1913) 30 R.P.C. 489.

(2) *Johnston* v. *Ewing* (1882) 7 App. Cas. 219.

PRIVY COUNCIL APPEAL.

Kenneth Johnston Q.C. (*Geoffrey Tompkin* with him) for the appellant.

John Whitford for the respondent.

The judgment of the learned trial judge which was restored by their Lordships of the Judicial Committee of the Privy Council was as follows:

Tan Ah Tah J.: The plaintiffs are a company incorporated in England and are manufacturers of medicated cough sweets. These sweets have been sold by the plaintiffs through their agents in Singapore since 1953. Each sweet is wrapped in an orange coloured wrapper on which is printed the name "Hacks" and a list of what are called active constituents of the sweet. At the time of importation into Singapore, the sweets are contained in tins, but when they are distributed to retailers the sweets are usually taken out of the tins and placed in glass jars and are thus displayed for sale. According to the evidence, the vast majority of retailers display the sweets for sale in this manner; only a few retailers sell the sweets out of the tin.

The defendants are a company incorporated in Singapore and carry on the business, *inter alia*, of manufacturers' agents. In March 1958 they commenced to sell in Singapore medicated cough sweets manufactured by the Red Band Confectionery Works, Holland. At the beginning the sweets were wrapped in white cellophane paper, but in May 1958 this was changed and from that time onwards each sweet was wrapped in an orange coloured wrapper on which was printed the name "Pecto" and a list of ingredients purporting to show the composition of the sweet. The manner in which "Pecto" sweets were wrapped in their wrappers was very similar to the way in which "Hacks" sweets were wrapped.

The plaintiffs' claim is for an injunction to restrain the defendants from passing off or attempting to pass off and from enabling others